

effort during the deferral period to locate other affordable housing.

(d) *Notification of decision on family preservation assistance.* A responsible entity shall notify the family of its decision concerning the family's qualification for family preservation assistance. If the family is ineligible for family preservation assistance, the notification shall state the reasons, which must be based on relevant factors. For tenant families, the notice also shall inform the family of any applicable appeal rights.

[61 FR 13616, Mar. 27, 1996, as amended at 61 FR 60539, Nov. 29, 1996; 64 FR 25732, May 12, 1999]

#### § 5.520 Proration of assistance.

(a) *Applicability.* This section applies to a mixed family other than a family receiving continued assistance, or other than a family who is eligible for and requests and receives temporary deferral of termination of assistance. An eligible mixed family who requests prorated assistance must be provided prorated assistance.

(b) *Method of prorating assistance for Housing covered programs—(1) Proration under Rent Supplement Program.* If the household participates in the Rent Supplement Program, the rent supplement paid on the household's behalf shall be the rent supplement the household would otherwise be entitled to, multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(2) *Proration under Section 235 Program.* If the household participates in the Section 235 Program, the interest reduction payments paid on the household's behalf shall be the payments the household would otherwise be entitled to, multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of eligible persons in the household;

(3) *Proration under Section 236 Program without the benefit of additional assistance.* If the household participates in the Section 236 Program without the benefit of any additional assistance, the household's rent shall be increased above the rent the household would

otherwise pay by an amount equal to the difference between the market rate rent for the unit and the rent the household would otherwise pay multiplied by a fraction the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household;

(4) *Proration under Section 236 Program with the benefit of additional assistance.* If the household participates in the Section 236 Program with the benefit of additional assistance under the rent supplement, rental assistance payment or Section 8 programs, the household's rent shall be increased above the rent the household would otherwise pay by:

(i) An amount equal to the difference between the market rate rent for the unit and the basic rent for the unit multiplied by a fraction, the denominator of which is the number of people in the household, and the numerator of which is the number of ineligible persons in the household, plus;

(ii) An amount equal to the rent supplement, housing assistance payment or rental assistance payment the household would otherwise be entitled to multiplied by a fraction, the denominator of which is the number of people in the household and the numerator of which is the number of ineligible persons in the household.

(c) *Method of prorating assistance for Section 8 covered programs—(1) Section 8 assistance other than assistance provided for a tenancy under the Section 8 Rental Voucher Program or for an over-FMR tenancy in the Section 8 Rental Certificate Program.* For Section 8 assistance other than assistance for a tenancy under the voucher program or an over-FMR tenancy under the certificate program, the PHA must prorate the family's assistance as follows:

(i) *Step 1.* Determine gross rent for the unit. (Gross rent is contract rent plus any allowance for tenant paid utilities).

(ii) *Step 2.* Determine total tenant payment in accordance with section 5.613(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(iii) *Step 3.* Subtract amount determined in paragraph (c)(1)(ii), (Step 2),

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from amount determined in paragraph (c)(1)(i), (Step 1).

(iv) *Step 4.* Multiply the amount determined in paragraph (c)(1)(iii), (Step 3) by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(v) *Prorated housing assistance.* The amount determined in paragraph (c)(1)(iv), (Step 4) is the prorated housing assistance payment for a mixed family.

(vi) *No effect on contract rent.* Proration of the housing assistance payment does not affect contract rent to the owner. The family must pay as rent the portion of contract rent not covered by the prorated housing assistance payment.

(2) *Assistance for a Section 8 voucher tenancy or over-FMR tenancy.* For a tenancy under the voucher program or for an over-FMR tenancy under the certificate program, the PHA must prorate the family's assistance as follows:

(i) *Step 1.* Determine the amount of the pre-proration housing assistance payment. (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(ii) *Step 2.* Multiply the amount determined in paragraph (c)(2)(i), (Step 1) by a fraction for which:

(A) The numerator is the number of family members who have established eligible immigration status; and

(B) The denominator is the total number of family members.

(iii) *Prorated housing assistance.* The amount determined in paragraph (c)(2)(ii), (Step 2) is the prorated housing assistance payment for a mixed family.

(iv) *No effect on rent to owner.* Proration of the housing assistance payment does not affect rent to owner. The family must pay the portion of rent to owner not covered by the prorated housing assistance payment.

(d) *Method of prorating assistance for Public Housing covered programs.* The PHA shall prorate the family's assistance by:

(1) *Step 1.* Determining total tenant payment in accordance with 24 CFR

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913.107(a). (Annual income includes income of all family members, including any family member who has not established eligible immigration status.)

(2) *Step 2.* Subtracting the total tenant payment from a HUD-supplied "public housing maximum rent" applicable to the unit or the PHA. (This "maximum rent" shall be determined by HUD using the 95th percentile rent for the PHA.) The result is the maximum subsidy for which the family could qualify if all members were eligible ("family maximum subsidy").

(3) *Step 3.* Dividing the family maximum subsidy by the number of persons in the family (all persons) to determine the maximum subsidy per each family member who has citizenship or eligible immigration status ("eligible family member"). The subsidy per eligible family member is the "member maximum subsidy".

(4) *Step 4.* Multiplying the member maximum subsidy by the number of family members who have citizenship or eligible immigration status ("eligible family members").

(5) *Step 5.* The product of steps 1 through 4, as set forth in paragraph (d)(2) of this section is the amount of subsidy for which the family is eligible ("eligible subsidy"). The family's rent is the "public housing maximum rent" minus the amount of the eligible subsidy.

[61 FR 5202, Feb. 9, 1996, as amended at 63 FR 23853, Apr. 30, 1998; 64 FR 13056, Mar. 16, 1999]

### § 5.522 Prohibition of assistance to noncitizen students.

(a) *General.* The provisions of §§ 5.516 and 5.518 permitting continued assistance or temporary deferral of termination of assistance for certain families do not apply to any person who is determined to be a noncitizen student as in paragraph (c)(2)(A) of Section 214 (42 U.S.C. 1436a(c)(2)(A)). The family of a noncitizen student may be eligible for prorated assistance, as provided in paragraph (b)(2) of this section.

(b) *Family of noncitizen students.* (1) The prohibition on providing assistance to a noncitizen student as described in paragraph (a) of this section extends to the noncitizen spouse of the noncitizen student and minor children